IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 179 OF 2002.

Shri D.R. Bhat,
Ex-Senior Town Planner,
Plot No. 2, Town Planning
Staff Co-op. Housing Society,
Alto Betim, Bardez Goa. ... Petitioner.

Versus

1. State of Goa,
   through its Chief
   Secretary, Secretariat,
   Panaji, Goa.
2. The Chief Town Planner,
   Town and Country Planning
   Department, Old Goa Medical
   College Complex, Panaji.
3. Government of India,
   Department of Pension &
   Pensioners Welfare, Ministry
   of Personnel, Public Grievances
   & Pensions, New Delhi, through
   its Secretary. ... Respondents.

Mrs. A.A. Agni, Advocate for the Petitioner.

Mr. V.P. Thali, Additional Advocate General for the Respondents.

Coram: D.G. DESHPANDE AND
P.V. HARDAS, JJ.

Date: 14th January 2003.

ORAL JUDGMENT (PER HARDAS, J.)

The short question involved in this petition is whether the Indian Statistical Institute is a Semi-Government undertaking and, therefore, whether the services rendered by the petitioner from 6th October 1969 to 8th October 1976 in the Indian Statistical Institute as a Scientific Employee has qualifying services for pension?

2. The facts necessary for the decision of this petition are set out hereunder:-

The petitioner superannuated with effect from 30th September 1999 from the Department of Town and Country Planning, where the petitioner was working as a Senior Town Planner. The petitioner had been initially appointed as a Senior Technical Assistant/Scientific Employee in the Indian Statistical Institute at New Delhi. The petitioner worked in the Indian Statistical Institute, hereinafter referred to as 'I.S.I.' for the sake of brevity, with effect from 6th October 1969 to 8th October 1976. In pursuance to an advertisement in the local newspaper, the petitioner applied for the post of Junior Town Planner in the Department of Town and Country Planning, Government of Goa. The petitioner was selected and an offer of appointment, dated 11th August 1976, was made to the petitioner, which offer was duly accepted by him. The petitioner came to be appointed, by the appointment Order, dated 26th October 1976, as Junior Town Planner in the Town and Country Planning Department, with effect from 11th October 1976. The petitioner was granted leave without pay by the I.S.I. for the period of one year and was permitted to hold lien against the post of Senior Technical Assistant, since 8th October 1976. Subsequently, by Office Memorandum, dated 3rd March 1978, the services of the

petitioner with I.S.I. stood terminated with effect from 11th October 1977 and the lien held by the petitioner came to an end. The petitioner made various representations for counting his services rendered in the I.S.I. with effect from 6th October 1969 to 8th October 1976 as qualifying services for the purpose of pension.

3. In response to the representation of the petitioner, dated 31st August 1999, the petitioner received a communication from the Chief Town Planner, dated 9th November 1999, informing the petitioner that the Government did not agree to his request for counting the past services rendered by him in the I.S.I., New Delhi. By letter, dated 8th February 2002, the petitioner was informed that the Government has not considered his request for counting his earlier services for qualifying for pension on the grounds (a) that the I.S.I. has opted for pensionary scheme from 1st January 1982 and, therefore, this change in the status of I.S.I. does not affect the case of Shri D.R. Bhat and (b) the Director of Accounts, Panaji, had clarified that their records do not show whether the petitioner had exercised option either to receive contributory provident fund benefits or choose to count services rendered in that body as qualifying service for pension by foregoing the employees share of contributory provident fund alongwith

interest thereon within one year from the date of joining. A statement is made in the petition that the petitioner has received the contributory provident fund benefit of Rs. 56.560/-, on 9th April 2002, in pursuance to the decision in the letter, dated 8th February 2002. The petitioner has stated that the said amount has been received by the petitioner under protest and without prejudice to his rights. It is also stated in the petition that the petitioner is willing to refund the said amount.

4. In the reply, which is filed on behalf of the respondents, it is stated that the I.S.I. is not a Semi-Government undertaking and the records do not disclose whether the petitioner had exercised the option either to receive contributory provident fund benefits or chose to count services rendered in that body as qualifying services for pension by foregoing the employees share of contributory provident fund within one year of the date of joining.

5. The I.S.I. is a creature of statute. The Indian Statistical Institute Act, 1959 came into force on 1st April 1960. Section 3 of the said Act declares that the I.S.I. is an Institute of national importance. Section 5 stipulates that for the purpose of enabling the institute to discharge efficiently its functions

including research, education, training, project activities and statistical work relating to planning for national development, the Central Government may, after due appropriation made by Parliament by law in that behalf, pay to the Institute in each financial year such sums of money as that Government considers necessary by way of grant, loan or otherwise. Section 7 requires prior approval of the Central Government for certain actions of the Institute. Section 8 empowers the Central Government to constitute as many committees as and when it considers necessary consisting of such number of persons as it thinks fit to appoint thereto for the preparation and submission, before the commencement of each financial year, of statements showing programmes of work agreed to be undertaken by the Institute during that year and the settlement on broad lines of the programme of such work. Section 9 also empowers the Central Government to constitute a Committee consisting of such number of persons as it thinks fit to appoint thereto for the purpose of reviewing the work done by the Institute and the progress made by it, inspecting its buildings, equipments and other assets, evaluating the work done by the Institute and advising the Government generally on any matter which in the opinion of the Central Government is of importance in connection with the work of the Institute. Section 11 of the Act empowers the

Central Government to issue directions to the Institute including the direction to amend the memorandum or to make or amend any rule or regulation within such period as may be specified in the directions and to give proprieties to the work undertaken or to be undertaken by the Institute in such manner as the Central Government may think fit to specify in that behalf. Section 12 empowers the Central Government to assume functions of control if the Institute has failed to give effect to any direction issued under sub-section (4) of Section 9 or Section 11 or if the Council of the Institute has exceeded or abused its powers in relation to the Institute or any part thereof.

6. The petitioner has relied on a letter, dated 18th February 2000, issued by the Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions, New Delhi, which states: "In this connection, I would like to intimate you that I.S.I. is a Central autonomous body funded by Central Govt. Accordingly, his case for counting of service may be reviewed in accordance with provisions of relevant orders and settled accordingly under intimation to this Department."

7. The provisions of the Indian Statistical Institute Act, 1959, a perusal thereof, clearly reveals

that I.S.I., though being an autonomous body, is funded, controlled and managed by the Central Government. I.S.I. is, thus, a Semi-Government Institute, where the Central Government has the full control. The learned counsel appearing on behalf of the respondents did not seriously contest before us that I.S.I. is a Semi-Government Institute. Therefore, that takes us to the next objection which is raised on behalf of the respondents.

8. Mr. Thali, the learned counsel appearing on behalf of the respondents, has invited our attention to Office Memorandum No. 28-10/84-Pension Unit, dated 29th August 1984. According to the learned counsel for the respondents, the employee has to give an option, within one year from the date of absorption, either to receive Contributory Provident Fund benefits which have accrued to him or chose to count the services rendered in Government as qualifying services for pension. The said Clause 3(a)(ii) is reproduced hereunder:-

> "A Central Government employee with Contributory Provident Fund benefits on permanent absorption in an autonomous body will have the option either to receive CPF benefits which have accrued to him from the Government and start his service afresh in that body or choose to count service rendered in Government as qualifying service for pension in the autonomous body by foregoing Government's share of CPF contributions with interest, which

> will be paid to the concerned autonomous body by the concerned Government Department. The option shall be exercised within one year from the date of absorption. If no option is exercised within stipulated period, employee shall be deemed to have opted to receive CPF benefits. The option once exercised shall be final."

9. Undisputably, the petitioner in this case worked as Senior Technical Assistant/Permanent Scientific Employee in the Indian Statistical Institute, New Delhi, from 6th October 1969 to 8th October 1976. On 11th October 1976, the petitioner was issued the appointment letter for the post of Junior Town Planner in the Department of Town and Country Planning. By Office Memorandum, dated 3rd March 1978, the services of the petitioner with the Indian Statistical Institute stood terminated with effect from 11th October 1977. Therefore, the clause requiring the petitioner to give his option within one year would not be applicable in the case of the petitioner. The case of the petitioner would be governed by Rule 20(i) of the Civil Conduct Services (Pension) Rules, which reads as under:-

> "20(i) A scientific employee of a semi-Government institution which is financed wholly or mainly from cess or Central Government grants who was on a Contributory Provident Fund basis in such an institution may, on permanent appointment without any interruption to a pensionable service or post under the Government of India count his previous service in that institution during which he subscribed to that Fund as service qualifying for pension provided that the contribution

> together with interest thereon paid by the institution is made over to the Government. The service during which he did not subscribe to the Contributory Provident Fund will not be so reckoned unless the previous employer agrees to bear proportionate charges on account of pensionary benefits for the service so rendered. If, however, the officer was not on a Contributory Provident Fund basis in such an institution, his previous service will be reckoned as qualifying for pension if the previous employer agrees to bear proportionate charges on account of pensionary benefits."

In the petition, in paragraph 11, it is stated that the petitioner has received, on 9th April 2002, an amount of Rs. 56,560/-, as Contributory Provident Fund held with the Indian Statistical Institute, which was transferred to the Goa Government as the Indian Statistical Institute Share of Contributory Provident Fund, in view of the letter, dated 8th February 2002, issued by the respondents. The petitioner states that the said amount was received by him under protest and without prejudice to his rights and legal remedies available to him. In fact, in the letter, at Exhibit C Colly, addressed by the petitioner to the Chief Town Planner, the petitioner had stated that he was prepared to surrender the Indian Statistical Institute's share of the contribution with interest thereon when the account is transferred to the Government of Goa for the above purpose.

10. For the aforesaid reasons, according to us, the Order, impugned in the present petition, refusing to

consider the period of services rendered by the petitioner with the Indian Statistical Institute from 6th October 1969 to 8th October 1976 as qualifying service for the purpose of fixation of pension and other retirement benefits is wholly illegal and unsustainable in law. The petition is, thus, allowed. The communications, dated 9th November 1999 and 8th February 2002, are, hereby, quashed and set aside and the respondents are directed to consider the period of service from 6th October 1969 to 8th October 1976 as qualifying service for fixation of pension and gratuity, provided the petitioner refunds the amount of Rs. 56,560/- with interest thereon and also fix the pension payable to the petitioner accordingly. The petitioner would be entitled to all other benefits, such as D.A. etc., on the figure arrived at and to pay quantified costs of Rs. 5000/-. The prayer for interest is disallowed in view of the costs granted.

(D.G. DESHPANDE)
JUDGE.

(P.V. HARDAS)
JUDGE.

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